

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 15, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 324

Introduced by Senator Pavley

(Coauthor: Senator Beall)

(Coauthors: Assembly Members Dodd and Kim)

(Principal coauthors: Assembly Members Irwin and Wilk)

February 23, 2015

An act to add Sections 17140.4 and 23711.4 to the Revenue and Taxation Code, and to add Chapter 15 (commencing with Section 4875) to Division 4.5 of the Welfare and Institutions Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 324, as amended, Pavley. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on or after January 1, 2015, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified

disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill would conform to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law and the Corporation Tax Law, as provided. The bill would also establish in state government ~~a Qualified ABLE Program and the ABLE Fund for purposes of implementing the federal ABLE Act. the ABLE program trust for purposes of implementing the federal ABLE Act.~~ The bill would create the ABLE Act Board. ~~The bill would authorize the Able Fund to accept moneys from ABLE accounts, to be segregated into the program account and the administrative account. The bill would continuously appropriate funds in the accounts to the board for specified purposes, thereby making an appropriation. Board and would authorize the board to adopt regulations to implement the program. The bill would create the program fund and the administrative fund, both continuously appropriated funds, thereby making an appropriation.~~ The bill would require the Treasurer to administer the program in compliance with the requirements of the federal ABLE Act.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17140.4 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17140.4. Section 529A of the Internal Revenue Code, relating
- 4 to qualified ABLE programs, added by Section 102 of Division B
- 5 of Public Law 113-295, shall apply, except as otherwise provided.
- 6 (a) Section 529A of the Internal Revenue Code is modified as
- 7 follows:
- 8 (1) By substituting the phrase “under this part and Part 11
- 9 (commencing with Section 23001)” in lieu of the phrase “under
- 10 this subtitle.”
- 11 (2) By substituting “Article 2 (commencing with Section
- 12 23731)” in lieu of “Section 511.”
- 13 (b) A copy of the report required to be filed with the Secretary
- 14 of the Treasury under Section 529A(d) of the Internal Revenue
- 15 Code, relating to reports, shall be filed with the Franchise Tax
- 16 Board at the same time and in the same manner as specified in that
- 17 section.

SEC. 2. Section 23711.4 is added to the Revenue and Taxation Code, to read:

23711.4. Section 529A of the Internal Revenue Code, relating to qualified ABLE programs, added by Section 102 of Division B of Public Law 113-295, shall apply, except as otherwise provided.

(a) Section 529A of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “Section 511.”

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529A(d) of the Internal Revenue Code, relating to reports, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 3. Chapter 15 (commencing with Section 4875) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 15. QUALIFIED ABLE PROGRAM

4875. For purposes of this chapter:

(a) “ABLE account” or “account” means the account ~~an eligible individual makes contributions to~~ *established and owned by a designated beneficiary* pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

~~(b) “ABLE Fund” or “fund” means the fund established by this chapter for purposes of implementing the federal ABLE Act.~~

~~(b) “Administrative fund” means the fund used to administer this chapter.~~

~~(c) “Board” means the California ABLE Act Board established under this chapter.~~

~~(d) “California ABLE Program Trust” or “ABLE program trust” means the trust created pursuant to this chapter.~~

~~(e)~~

(e) “Designated beneficiary” means the eligible individual who established an ABLE account and is the owner of the account.

~~(d)~~

1 (f) “Eligible individual” means an individual who is eligible
2 under the program for a taxable year if during that taxable year ~~all~~
3 *both* of the following criteria are met:

4 (1) The individual is entitled to benefits based on blindness or
5 disability under Title II or XVI of the federal Social Security Act,
6 and that blindness or disability occurred before the date on which
7 the individual attained 26 years of age.

8 (2) A disability certification, as defined in the federal ABLE
9 Act, with respect to the individual is filed pursuant to the
10 requirements set forth in the federal ABLE Act.

11 ~~(e)~~

12 (g) “Federal ABLE-~~act~~” Act” means the federal Stephen Beck
13 Jr., Achieving a Better Life Experience Act of 2014.

14 (h) “*Investment management*” means the functions performed
15 by a manager contracted to perform functions delegated by the
16 board.

17 (i) “*Investment manager*” means a manager contracted to
18 perform functions delegated by the board.

19 (j) “*Program fund*” means the program fund established by this
20 chapter, which shall be held as a separate fund within the
21 California ABLE Program Trust.

22 ~~(f)~~

23 (k) “Qualified ABLE Program” or “program” means the program
24 established by this chapter to implement the federal ABLE Act
25 pursuant to Section 529A of the Internal Revenue Code.

26 ~~(g)~~

27 (l) “Qualified disability expenses” means any expenses related
28 to the eligible individual’s blindness or disability that are made
29 for the benefit of an eligible individual who is the designated
30 beneficiary, including expenses related to education, housing,
31 transportation, employment training and support, assistive
32 technology and personal support services, health, prevention and
33 wellness, financial management and administrative services, legal
34 fees, expenses for oversight and monitoring, funeral and burial
35 expenses, and other expenses, which are approved by the Secretary
36 of the Treasury under regulations and consistent with the purposes
37 of the federal ABLE Act.

38 4876. There is hereby created the *California* ABLE Act Board
39 that consists of the Treasurer, the Director of Finance, the
40 Controller, the Director of Developmental Services, the

Chairperson of the State Council on Developmental Disabilities, the Director of Rehabilitation, and the ~~chair~~ *Chair* of the State Independent Living Council, or their designees. *The Treasurer shall serve as chair of the board.*

4877. (a) ~~There is hereby established in state government a Qualified ABLE Program and the ABLE Fund for purposes of implementing the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.~~ *created an instrumentality of the State of California to be known as the California ABLE Program Trust.*

(b) ~~The Qualified purposes, powers, and duties of the California ABLE Program shall be administered by the Treasurer, who shall be responsible to ensure that the program is administered in compliance with the requirements of the federal ABLE Act.~~ *Trust are vested in, and shall be exercised by, the board.*

(c) (1) ~~The ABLE Fund shall accept moneys from all ABLE accounts.~~

(2) ~~The ABLE Act Board shall segregate moneys received by the ABLE Fund into two accounts, which shall be identified as the program account and the administrative account.~~

(A) ~~Notwithstanding Section 13340 of the Government Code, the program account is hereby continuously appropriated, without regard to fiscal years, to the ABLE Act Board for the purposes specified in this act.~~

(B) ~~Notwithstanding Section 13340 of the Government Code, the administrative account is hereby continuously appropriated, without regard to fiscal years, to the ABLE Act Board for administration of the act. Administrative costs shall not exceed 1 percent of the incoming funds for the fiscal year.~~

(d) ~~Funding for startup and first-year administrative costs shall be appropriated from the General Fund in the annual Budget Act. The board shall repay, within five years, the amount appropriated, plus interest calculated at the rate earned by the Pooled Money Investment Account. Necessary administrative costs in future years shall be paid out of the administrative fund pursuant to subparagraph (B) of paragraph (2) of subdivision (c).~~

(c) *The board, in the capacity of trustee, shall have the power and authority to do all of the following:*

(1) *Sue and be sued.*

(2) *Make and enter into contracts necessary for the administration of the ABLE program trust, and engage personnel,*

1 *including consultants, actuaries, managers, counsel, and auditors,*
2 *as necessary for the purpose of rendering professional, managerial,*
3 *and technical assistance and advice.*

4 *(3) Adopt a corporate seal and change and amend it from time*
5 *to time.*

6 *(4) Cause moneys in the program fund to be held and invested*
7 *and reinvested.*

8 *(5) Accept any grants, gifts, appropriations, and other moneys*
9 *from any unit of federal, state, or local government or any other*
10 *person, firm, partnership, or corporation for deposit to the*
11 *administrative fund or the program fund. The board may not accept*
12 *any contribution by any nonpublic entity, person, firm, partnership,*
13 *or corporation that is not designated for a specified designated*
14 *beneficiary.*

15 *(6) Enter into agreements with designated beneficiaries or*
16 *eligible individuals to establish and maintain an ABLE account.*

17 *(7) Make provisions for the payment of costs of administration*
18 *and operation of the ABLE program trust.*

19 *(8) Carry out the duties and obligations of the ABLE program*
20 *trust pursuant to this chapter and the federal ABLE Act pursuant*
21 *to Section 529A of the Internal Revenue Code and federal*
22 *regulations issued pursuant to that code, and have any other*
23 *powers as may be reasonably necessary for the effectuation of the*
24 *purposes, objectives, and provisions of this chapter.*

25 *(9) Carry out studies and projections in order to advise*
26 *designated beneficiaries or eligible individuals regarding present*
27 *and estimated future qualified disability expenses and the levels*
28 *of financial participation in the ABLE program trust required in*
29 *order to assist designated beneficiaries or eligible individuals.*

30 *(10) Participate in any other way in any federal, state, or local*
31 *governmental program for the benefit of the ABLE program trust.*

32 *(11) Promulgate, impose, and collect administrative fees and*
33 *charges in connection with transactions of the ABLE program*
34 *trust, and provide for reasonable service charges, including*
35 *penalties for cancellations.*

36 *(12) Set minimum and maximum investment levels.*

37 *(13) Administer the funds of the ABLE program trust.*

38 *(14) Procure insurance against any loss in connection with the*
39 *property, assets, or activities of the ABLE program trust.*

1 (15) Procure insurance indemnifying any member of the board
2 from personal loss or liability resulting from a member's action
3 or inaction as a member of the board.

4 (d) The Treasurer shall, on behalf of the board, appoint an
5 executive director, who shall not be a member of the board and
6 who shall serve at the pleasure of the board. The Treasurer shall
7 determine the duties of the executive director and other staff as
8 necessary and set his or her compensation. The board may
9 authorize the executive director to enter into contracts on behalf
10 of the board or conduct any business necessary for the efficient
11 operation of the board.

12 ~~4878. Under the program, a person may make contributions~~
13 ~~for a taxable year, for the benefit of an individual who is an eligible~~
14 ~~individual for that taxable year, to an ABLE account that is~~
15 ~~established for the purpose of meeting the qualified disability~~
16 ~~expenses of the designated beneficiary of the account, if all of the~~
17 ~~following criteria are met:~~

18 ~~(a) The designated beneficiary is limited to one ABLE account~~
19 ~~for purposes of this chapter.~~

20 ~~(b) The ABLE account is established only for a designated~~
21 ~~beneficiary who is a resident of this state.~~

22 ~~4879. The Treasurer may adopt regulations to implement this~~
23 ~~chapter.~~

24 ~~4880. Notwithstanding any other law, moneys in, contributions~~
25 ~~to, and any distribution for qualified disability expenses from, an~~
26 ~~ABLE account, not to exceed one hundred thousand dollars~~
27 ~~(\$100,000) shall not count toward determining eligibility for the~~
28 ~~Medi-Cal program pursuant to Chapter 7 (commencing with~~
29 ~~Section 14000) of Part 3 of Division 9.~~

30 4878. (a) The board shall segregate moneys received by the
31 ABLE program trust into two funds, which shall be identified as
32 the program fund and the administrative fund.

33 (1) Notwithstanding Section 13340 of the Government Code,
34 the program fund is hereby continuously appropriated, without
35 regard to fiscal years, to the ABLE Act Board for the purposes
36 specified in this act.

37 (2) Notwithstanding Section 13340 of the Government Code,
38 the administrative fund is hereby continuously appropriated,
39 without regard to fiscal years, to the ABLE Act Board for
40 administration of the act. Administrative costs shall not exceed 3

1 percent of the incoming funds for each fiscal year for the first five
2 fiscal years following the opening of the first ABLE Act account.
3 After the five-year period, administrative costs shall not exceed 1
4 percent of the incoming funds for each fiscal year.

5 (3) Funding for startup and administrative costs for the board
6 shall be provided in the form of a loan from the General Fund
7 sufficient to cover the board's projected administrative costs for
8 its first two years of implementing the program. Once the loan has
9 been expended and revenues from the program are sufficient to
10 cover the board's ongoing costs, the board shall repay, within five
11 years, the amount loaned, plus interest calculated at the rate
12 earned by the Pooled Money Investment Account.

13 (b) Not later than 30 days after the close of each month, the
14 investment manager shall place on file for public inspection during
15 business hours a report with respect to investment performance.
16 The investment manager shall report the following information,
17 to the extent applicable, to the board within 30 days following the
18 end of each month:

19 (1) The type of investment, name of the issuer, date of maturity,
20 and the par and dollar amount invested in each security,
21 investment, and money within the program fund.

22 (2) The weighted average maturity of the investments within the
23 program fund.

24 (3) Any amounts in the program fund that are under the
25 management of an investment manager.

26 (4) The market value as of the date of the report and the source
27 of this valuation for any security within the program fund.

28 (5) A description of the compliance with the statement of
29 investment policy.

30 (c) Moneys in the program fund may be invested or reinvested
31 by the Treasurer or may be invested in whole or in part under
32 contract with an investment manager, as determined by the board.

33 (d) The board shall annually prepare and adopt a written
34 statement of investment policy. The board shall consider the
35 statement of investment policy and any changes in the investment
36 policy at a public hearing. The board shall approve the investment
37 management entity or entities consistent with subdivision (c).

38 (e) Transfers may be made from the program fund to the
39 administrative fund for the purpose of paying operating costs
40 associated with administering the ABLE program trust and as

1 *required by this chapter. All costs of administration of the ABLE*
2 *program trust shall be paid out of the administrative fund.*

3 *(f) All moneys paid by designated beneficiaries or eligible*
4 *individuals in connection with ABLE accounts shall be deposited*
5 *as received into the program fund, and shall be promptly invested*
6 *and accounted for separately. Deposits and interest thereon*
7 *accumulated on behalf of designated beneficiaries in the program*
8 *fund of the ABLE program trust may be used for qualified disability*
9 *expenses.*

10 *(g) The board shall maintain separate accounting for each*
11 *designated beneficiary.*

12 *(h) Any designated beneficiary may, directly or indirectly, direct*
13 *the investment of any contributions to his or her ABLE account,*
14 *or any earnings thereon, no more than two times in any calendar*
15 *year.*

16 *(i) The assets of the trust, including the program fund, shall at*
17 *all times be preserved, invested, and expended solely and only for*
18 *the purposes of the trust and shall be held in trust for the*
19 *designated beneficiaries and no property rights therein shall exist*
20 *in favor of the state. The assets shall not be transferred or used*
21 *by the state for any purposes other than the purposes of the trust*
22 *and consistent with the provisions of the federal ABLE Act.*

23 *4879. (a) Under the program, a person may make contributions*
24 *for a taxable year, for the benefit of an individual who is an eligible*
25 *individual for that taxable year, to an ABLE account that is*
26 *established for the purpose of meeting the qualified disability*
27 *expenses of the designated beneficiary of the account if both of*
28 *the following criteria are met:*

29 *(1) The designated beneficiary is limited to one ABLE account*
30 *for purposes of this chapter.*

31 *(2) The ABLE account is established only for a designated*
32 *beneficiary who is a resident of this state.*

33 *(b) A contribution to any ABLE account shall not be accepted*
34 *unless one of the following conditions is satisfied:*

35 *(1) The contribution is in cash.*

36 *(2) Except in the case of contributions under Section*
37 *529A(c)(1)(C) of the Internal Revenue Code, if the contribution*
38 *to an ABLE account would result in aggregate contributions from*
39 *all contributors to the ABLE account for the taxable year exceeding*

1 *the amount in effect under Section 2503(b) of the Internal Revenue*
2 *Code for the calendar year in which the taxable year begins.*

3 *(c) The designated beneficiary shall retain ownership of all*
4 *contributions made to the designated beneficiary's ABLE account*
5 *to the date of utilization for qualified disability expenses, and all*
6 *interest derived from the investment of the contributions to the*
7 *designated beneficiary's ABLE account shall be deemed to be held*
8 *in the ABLE program trust for the benefit of the designated*
9 *beneficiary. Neither the contributions, nor any interest derived*
10 *therefrom, may be pledged as collateral for any loan.*

11 *(d) The board shall develop adequate safeguards to prevent*
12 *aggregate contributions on behalf of a designated beneficiary in*
13 *excess of the maximum contribution limits necessary to provide*
14 *for the qualified disability expenses of the designated beneficiary.*
15 *For purposes of this subdivision, aggregate contributions include*
16 *contributions under any prior qualified ABLE program of any*
17 *state or agency or instrumentality thereof.*

18 *4880. Notwithstanding any other law, moneys in, contributions*
19 *to, and any distribution for qualified disability expenses from, an*
20 *ABLE account, not to exceed one hundred thousand dollars*
21 *(\$100,000), shall not count toward determining eligibility for a*
22 *state or local means-tested program.*

23 *4881. (a) The board shall provide an annual listing of*
24 *distributions to individuals with respect to an interest in an ABLE*
25 *account to the Franchise Tax Board at a time and in a manner*
26 *and form as specified by the Franchise Tax Board. The taxpayers'*
27 *identification numbers obtained in connection with an ABLE*
28 *account shall be used exclusively for state and federal tax*
29 *administration purposes.*

30 *(b) The board shall make a report to the appropriate individual*
31 *of any distribution to any individual with respect to an interest in*
32 *an ABLE account, at a time and in a form and manner as required*
33 *by the Franchise Tax Board.*

34 *(c) The board shall report annually to each designated*
35 *beneficiary all of the following:*

36 *(1) The value of the designated beneficiary's account.*

37 *(2) The interest earned thereon.*

38 *(3) The rate of return of the investments in the designated*
39 *beneficiary's account for that reporting period.*

1 (4) *Information on investments and qualified disability expenses*
2 *that designated beneficiaries can use to set savings goals and*
3 *contribution amounts.*

4 (d) *The board shall provide a means for designated beneficiaries*
5 *to express concerns or comments regarding the ABLE program*
6 *trust and any information required to be reported by this section.*

7 4882. (a) *The board shall adopt regulations as it deems*
8 *necessary to implement this chapter consistent with the federal*
9 *Internal Revenue Code and regulations issued pursuant to that*
10 *code to ensure that this program meets all criteria for federal*
11 *tax-exempt benefits.*

12 (b) *The board may adopt regulations to implement this chapter*
13 *as emergency regulations in accordance with the rulemaking*
14 *provisions of the Administrative Procedure Act (Chapter 3.5*
15 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
16 *2 of the Government Code). The adoption of the regulations shall*
17 *be deemed to be an emergency and necessary for the immediate*
18 *preservation of the public peace, health and safety, or general*
19 *welfare.*

20 4883. *This act shall be construed liberally in order to effectuate*
21 *its legislative intent. The purposes of this act and all of its*
22 *provisions with respect to powers granted shall be broadly*
23 *interpreted to effectuate the intent and purposes of the federal*
24 *ABLE Act and not as a limitation of those powers.*

25 4884. *The board shall market this program to residents of the*
26 *State of California to the extent funds are available to do so.*